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6  
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8 TOMS Shoes, LLC

9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION**

13  
14 TOMS SHOES, LLC, a Delaware  
Limited Liability Company,

15 Plaintiff,

16 v.

17 G.B. BEACH CONCEPTS, INC., a  
Florida corporation; JERRY  
18 FOERCH, an individual; and DOES 1  
through 10, inclusive,

19 Defendants.  
20  
21

Case No. \_\_\_\_\_

**COMPLAINT FOR DAMAGES,  
INJUNCTIVE, AND OTHER  
RELIEF FOR VIOLATION OF 15  
U.S.C. § 1114, 15 U.S.C. § 1125(a),  
AND RELATED CLAIMS**

22  
23 Plaintiff TOMS Shoes, LLC, a Delaware limited liability company (“Plaintiff”  
24 or “TOMS”), brings this action against Defendants G.B. BEACH CONCEPTS, INC.,  
25 A Florida corporation; JERRY FOERSCH, an individual, and Does 1-10  
26 (collectively, “Defendants”) for trademark infringement in violation of the Lanham  
27 Act, 15 U.S.C. §§1114 and 1125; unfair competition in violation of the Lanham Act,  
28 15 U.S.C. §1125(a); unfair and deceptive business practices under Cal. Bus. & Prof.

Code §§ 17200, *et seq.*; unfair competition under California common law; and tortious interference with contractual relations. These claims arise from Defendants' misappropriation of TOMS' trademarks by selling used, dirty, poor-quality, potentially counterfeit, and otherwise non-genuine products bearing TOMS' trademarks on the Internet despite advertising these products as new and genuine TOMS products. In support of its Complaint, TOMS alleges as follows:

### **PARTIES**

1. TOMS is a limited liability company, organized under the laws of Delaware, with its principal place of business located in Los Angeles, California.

2. Defendant G.B. Beach Concepts, Inc., ("Beach Concepts") is a corporation, organized under the laws of Florida, with its principal place of business located at 2611 NE 11<sup>th</sup> Ct., Ft. Lauderdale, FL, 33304. According to records of the Florida Secretary of State, Beach Concept's principal address, mailing address, and registered agent address is 2611 NE 11<sup>th</sup> Ct., Ft. Lauderdale, FL, 33304.

3. Defendant Jerry Foerch ("Foerch") is a natural person who, according to records of the Florida Secretary of State, is the President and registered agent of G.B. Beach Concepts, Inc. Upon information and belief, Foerch resides at 2611 NE 11 Ct., Ft. Lauderdale, FL, 33304.

4. Upon information and belief, Defendants operate a third-party storefront on [www.amazon.com](http://www.amazon.com) ("Amazon") that is currently called "Beach feet," with a Merchant ID number of : A368P1XA7FWOMA.<sup>1</sup> The "Beach feet" storefront can be accessed at <https://www.amazon.com/s?me=A368P1XA7FWOMA&marketplaceID=ATVPDKIKX0DER>.

5. Defendants are acting in concert as part of a coordinated scheme to sell products bearing TOMS' trademarks without authorization through the "Beach Feet" Amazon storefront (the "Unauthorized Storefront").

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<sup>1</sup> Amazon allows storefront operators to change the names of their storefronts, but every storefront on Amazon is assigned a "Merchant ID" number that does not change over time, even if the formal "name" of the storefront is changed.



**FACTUAL ALLEGATIONS**

**TOMS and Its Trademarks**

11. TOMS markets and sells high-quality footwear products, including products under the TOMS® brand name (“TOMS products”).

12. TOMS allows its products to be purchased by end-user consumers in the United States only from TOMS itself or from sellers who are expressly authorized by TOMS to sell TOMS products (“Authorized Sellers”).

13. TOMS permits Authorized Sellers to sell TOMS products in approved channels only and requires Authorized Sellers to abide by agreements, policies, and other rules that impose requirements relating to quality controls, customer service, and other sales practices (collectively, the “TOMS Rules”).

14. TOMS devotes a significant amount of time, energy, and resources toward protecting the value of its brand, products, name, and reputation. By allowing end-user consumers to purchase TOMS products only from TOMS itself or from Authorized Sellers who are required to follow the quality controls and other requirements in the TOMS Rules, TOMS ensures that consumers receive products that are subject to its quality controls and maintains the integrity and reputation of the TOMS brand. In the highly competitive footwear market, quality and customer service are a fundamental part of a consumer’s decision to purchase a product.

15. To promote and protect the TOMS brand, TOMS has registered numerous trademarks with the United States Patent and Trademark Office, including but not limited to: TOMS® (U.S. Trademark Registration Nos. 3,353,902, 3,765,503, 3,566,093, 3,662,112, 4,410,344, 4,274,178, 4,192,925, 4,313,981, 5,276,577, 5,652,240, and 4,517,359) (collectively, the “TOMS Trademarks”).

16. The registration for each of the TOMS Trademarks is valid, subsisting, and in full force and effect.

17. TOMS actively uses, advertises, and markets the TOMS Trademarks in commerce.

18. Consumers recognize the TOMS Trademarks as being associated with high-quality footwear products.

19. Due to the quality and exclusive distribution of TOMS' products, and because TOMS is recognized as the source of high-quality products, the TOMS Trademarks have enormous value.

### Online Marketplaces and the Challenge They Present to TOMS Product Quality

20. E-commerce retail sales have exploded over the past decade. From 2013 to the end of 2023, the percentage of total retail sales in the United States that were completed through e-commerce channels rose from 5.6% to 15.6%. *E-Commerce Retail Sales as a Percent of Total Sales*, FEDERAL RESERVE BANK OF ST. LOUIS (November 17, 2023), <https://fred.stlouisfed.org/series/ECOMPCTSA>.

21. In 2022, consumers spent \$1.03 trillion on e-commerce sales, a 7.7% increase from 2021. See Paul Conley, *US ecommerce sales and market size*, DIGITAL COMMERCE 360 (February 17, 2023), <https://www.digitalcommerce360.com/article/us-ecommerce-sales/>. The massive growth in e-commerce is being driven largely by sales on online marketplaces. For example, in 2022, United States consumers spent \$869.8 billion on U.S. marketplaces, including \$367 billion on Amazon. See James Risley, *What are the top online marketplaces?*, DIGITAL COMMERCE 360 (March 1, 2023), <https://www.digitalcommerce360.com/article/infographic-top-online-marketplaces/>.

22. While online marketplaces have created a great deal of opportunity, they also greatly challenge a brand owner's ability to control the quality and safety of its products.

23. Unlike when purchasing products at a brick-and-mortar store, consumers who purchase products through online marketplaces cannot touch, inspect, or interact with products before purchasing them. Instead, consumers must trust that the product they select over the Internet will be authentic and of the quality they expect and typically receive from the manufacturer.

1        24. Online marketplaces have an exceedingly low barrier to entry, do not  
2 require sellers to be authorized sellers of the products they sell, and do not require  
3 sellers to disclose to consumers whether they are an authorized or unauthorized seller.  
4 As a result, any person who is able to obtain a brand owner's products through  
5 unauthorized diversion can sell the products on online marketplaces while concealing  
6 that they are an unauthorized seller who is outside of, and does not abide by, the brand  
7 owner's quality controls.

8        25. Online marketplaces are overrun by unauthorized sellers who have no  
9 relationship with (or obligations to) brand owners who exercise quality controls over  
10 their products sold by authorized sellers. It is unfortunately common for unauthorized  
11 sellers to sell diverted products on online marketplaces that are of lesser quality than  
12 products sold through brand owners' authorized channels. *See* Scott Cohn, *Greed*  
13 *Report: Your quest for savings could land you in the "gray market,"* CNBC, Sept. 8,  
14 2016, [https://www.cnbc.com/2016/09/08/greed-report-your-quest-for-savings-could-](https://www.cnbc.com/2016/09/08/greed-report-your-quest-for-savings-could-land-you-in-the-gray-market.html)  
15 [land-you-in-the-gray-market.html](https://www.cnbc.com/2016/09/08/greed-report-your-quest-for-savings-could-land-you-in-the-gray-market.html); Alexandra Berzon et al., *Amazon Has Ceded*  
16 *Control of Its Site. The Result: Thousands of Banned, Unsafe or Mislabeled Products,*  
17 *THE WALL STREET JOURNAL*, Aug. 23, 2019, [https://www.wsj.com/articles/amazon-](https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990)  
18 [has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-](https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990)  
19 [products-11566564990](https://www.wsj.com/articles/amazon-has-ceded-control-of-its-site-the-result-thousands-of-banned-unsafe-or-mislabeled-products-11566564990). It is also common for unauthorized sellers to sell products that  
20 are previously used—including products retrieved from dumpsters—as “new” on  
21 online marketplaces. *See* Khadeeja Safdar et al., *You Might Be Buying Trash on*  
22 *Amazon—Literally,* *THE WALL STREET JOURNAL*, Dec. 18, 2019,  
23 [https://www.wsj.com/articles/you-might-be-buying-trash-on-amazonliterally-](https://www.wsj.com/articles/you-might-be-buying-trash-on-amazonliterally-11576599910)  
24 [11576599910](https://www.wsj.com/articles/you-might-be-buying-trash-on-amazonliterally-11576599910).

25        26. Third-party sellers on Amazon may also sell counterfeit items, or allow  
26 counterfeit items to enter the stream of commerce through poor controls, sourcing, and  
27 fulfillment practices.

28        27. For example, the Department of Homeland Security recently published a

1 report noting that online marketplaces can facilitate the sale of counterfeit goods and  
 2 that “American consumers shopping on e-commerce platforms and online third-party  
 3 marketplaces now face a significant risk of purchasing counterfeit or pirated goods.”  
 4 Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated*  
 5 *Goods* (Jan. 24, 2020), available at  
 6 [https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf)  
 7 [pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf), at 7. The report stated that consumers on online  
 8 marketplaces cannot rely on traditional “red flag” indicators of counterfeits and “have  
 9 been surprised to discover that upon completion of an online sales transaction, that the  
 10 order will be fulfilled by an unknown third-party seller.” *Id.* at 14-15, 38. To mitigate  
 11 these problems, the report recommended “[s]ignificantly enhanced vetting of third-  
 12 party sellers.” *Id.* at 35.

13 28. The business press has also reported extensively on how there is an  
 14 “epidemic” of counterfeit products being sold on the online marketplaces that diverters  
 15 are exploiting because they know consumers trust marketplaces and think the products  
 16 they are buying through the marketplaces are genuine. *See* Spencer Soper, *Amazon*  
 17 *Gets Real About Fakes*, Bloomberg, Nov. 28, 2016,  
 18 <https://www.bloomberg.com/news/articles/2016-11-28/amazon-gets-real-about-fakes>;  
 19 Jay Greene, *How Amazon’s quest for more, cheaper products has resulted in a flea*  
 20 *market of fakes*, THE WASHINGTON POST, Nov. 14, 2019,  
 21 [https://www.washingtonpost.com/technology/2019/11/14/how-amazons-quest-more-](https://www.washingtonpost.com/technology/2019/11/14/how-amazons-quest-more-cheaper-products-has-resulted-flea-market-fakes/?arc404=true)  
 22 [cheaper-products-has-resulted-flea-market-fakes/?arc404=true](https://www.washingtonpost.com/technology/2019/11/14/how-amazons-quest-more-cheaper-products-has-resulted-flea-market-fakes/?arc404=true).

23 29. The problem of sales of counterfeit and poor-quality products on online  
 24 marketplaces has become so serious that, in November 2019, the United States Senate  
 25 Finance Committee issued a bipartisan report on the issue. The Committee found that  
 26 the rise of e-commerce has fundamentally changed how consumers shop for products  
 27 and that, as e-commerce has grown, counterfeit goods and products that “violate a right  
 28 holder’s trademark or copyright” are being sold at an accelerating rate on e-commerce



platforms. The Committee concluded that these sales are a “significant threat” to rights holders’ brands and to consumers, and that under current law it is up to rights holders to protect their intellectual property rights online. *See* Senate Finance Committee, *The Fight Against Fakes: How Statutory and Regulatory Barriers Prevent the Sharing of Information on Counterfeits*, Nov. 7, 2019, [https://www.finance.senate.gov/imo/media/doc/The%20Fight%20Against%20Fakes%20\(2019-11-07\).pdf](https://www.finance.senate.gov/imo/media/doc/The%20Fight%20Against%20Fakes%20(2019-11-07).pdf).

30. In its 2022 annual report to its shareholders, Amazon also admitted that third-party sellers on its marketplace are selling products that are “counterfeit,” “pirated,” “stolen,” or otherwise “materially different” from the product that was described to consumers. *See Amazon.com, Inc., Annual Report (Form 10-K)*, at 8 (Feb. 2, 2023), available at <https://ir.aboutamazon.com/annual-reports-proxies-and-shareholder-letters/default.aspx>. Amazon conceded that these actions are “violating the proprietary rights of others,” and warned its investors that it could be liable for “unlawful activities” of Amazon third-party sellers.

31. Because brand owners have no relationship with or control over unauthorized sellers, brand owners have no ability to exercise their quality controls over products sold by unauthorized sellers or to ensure the products are safe and authentic. A manufacturer’s inability to exercise control over the quality of its products presents serious risks to the safety of consumers.

32. The structure, construction, and user interface of online marketplaces also pose threats to a manufacturer’s ability to maintain its goodwill, reputation, and brand integrity.

33. When purchasing products on an online marketplace, customers are not informed whether a seller of a product is authorized by the manufacturer. Additionally, the interface design of many online marketplaces causes consumers to falsely believe that they are always purchasing from the manufacturer or, at minimum, from an authorized seller that is selling under the manufacturer’s oversight and with the



1 manufacturer's approval.

2 34. For all of these reasons, a vast number of consumers purchase products on  
3 online marketplaces without recognizing that they purchased from an unauthorized  
4 seller that does not (and cannot) follow the manufacturer's quality controls.

5 35. When a customer purchases a product on an online marketplace and  
6 receives a damaged, defective, or otherwise poor-quality product, the customer is much  
7 more likely to associate the problem with the brand/manufacturer rather than the  
8 product seller.

9 36. Online marketplaces also give disgruntled customers a powerful and  
10 convenient forum to air their grievances about problem products—online product  
11 reviews. Any consumer who is dissatisfied with the product received can post a review  
12 on the marketplace for all other consumers across the world to see. These reviews,  
13 which are often permanently fixed, will often criticize the brand rather than the  
14 marketplace seller that sold the product.

15 37. Online product reviews significantly impact a brand's reputation. Survey  
16 results show that 99.75% of United States consumers read reviews "at least sometimes"  
17 when they consider buying a new product online, and 45% will not purchase a product  
18 if there are no reviews available for it. *Survey: The Ever-Growing Power of Reviews*  
19 *(2023 Edition)*, POWER REVIEWS, [https://www.powerreviews.com/research/power-of-](https://www.powerreviews.com/research/power-of-reviews-2023/)  
20 [reviews-2023/](https://www.powerreviews.com/research/power-of-reviews-2023/) (last visited Jan. 18, 2024).

21 38. Reviews are especially impactful on online consumers. In a brick-and-  
22 mortar store, a consumer can simply select another product from the shelf if the initial  
23 product selected appears to be compromised. However, online consumers are left  
24 simply having to hope that the product that shows up on their doorstep is of appropriate  
25 quality. Therefore, online consumers rely more on brand reputation and reviews.

26 39. Because of the reliance consumers place on online reviews, negative  
27 online reviews can be the death knell for a manufacturer's online product listings. One  
28 study found that the impact of negative reviews went beyond the impact on a

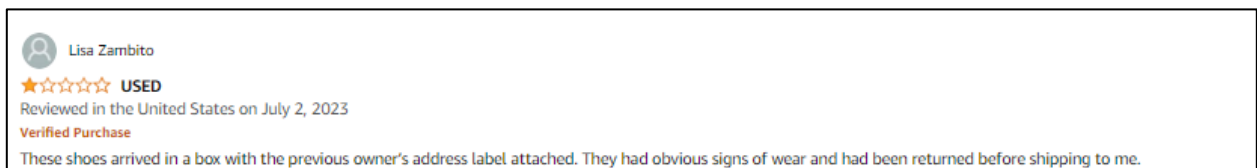
1 consumer's immediate purchase, but also shortened the time they spent reading other  
 2 reviews about the product and made them seek more information about competitors.  
 3 Paulo Albuquerque and Marton Varga, *How Negative Reviews Affect Online*  
 4 *Consumers*, KNOWLEDGE, November 9, 2023,  
 5 [https://knowledge.insead.edu/marketing/how-negative-reviews-affect-online-](https://knowledge.insead.edu/marketing/how-negative-reviews-affect-online-consumers#:~:text=In%20summary%2C%20a%20negative%20review,seek%20more%20information%20about%20competitors)  
 6 [consumers#:~:text=In%20summary%2C%20a%20negative%20review,seek%20more](https://knowledge.insead.edu/marketing/how-negative-reviews-affect-online-consumers#:~:text=In%20summary%2C%20a%20negative%20review,seek%20more%20information%20about%20competitors)  
 7 [%20information%20about%20competitors](https://knowledge.insead.edu/marketing/how-negative-reviews-affect-online-consumers#:~:text=In%20summary%2C%20a%20negative%20review,seek%20more%20information%20about%20competitors). Negative reviews also hurt a brand's  
 8 placement in search results on Amazon and other search engines, as Amazon's search  
 9 algorithm downgrades products it believes consumers are less likely to buy. Thus, poor  
 10 reviews can create a downward spiral where downgraded search placement leads to  
 11 reduced sales, which leads to search placement falling further.

### 12 **TOMS Has Been the Target of Negative Online Marketplace Reviews from** 13 **Customers Who Purchased Products from Unauthorized Sellers**

14 40. Consumers who purchase from unauthorized sellers on online  
 15 marketplaces frequently receive poor-quality products and leave negative reviews on  
 16 the product listing. These negative reviews injure consumer perceptions of the brand's  
 17 quality and reputation, as well as its placement in search results, ultimately causing the  
 18 brand to suffer damage to its goodwill and lost sales.

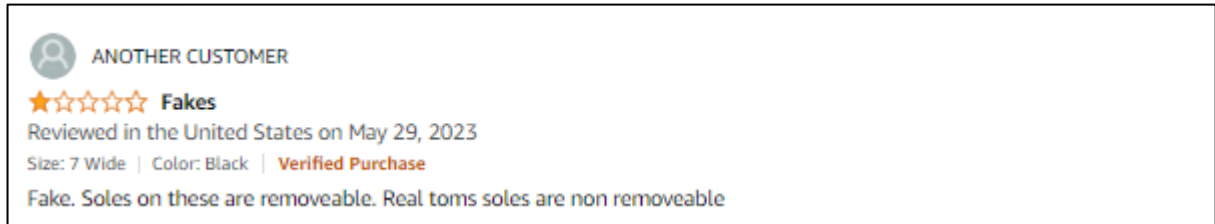
19 41. TOMS has been a victim of the issues caused by unauthorized sellers on  
 20 online marketplaces. Numerous consumers who purchased TOMS products from  
 21 unauthorized sellers, like Defendants, have written negative reviews where they  
 22 complained of receiving products that were damaged, defective, previously used,  
 23 counterfeit, or of otherwise poor quality.

24 42. For example, on July 2, 2023, Amazon user "Lisa Zambito" received used  
 25 shoes and complained that the "shoes arrived in a box with the previous owner's address

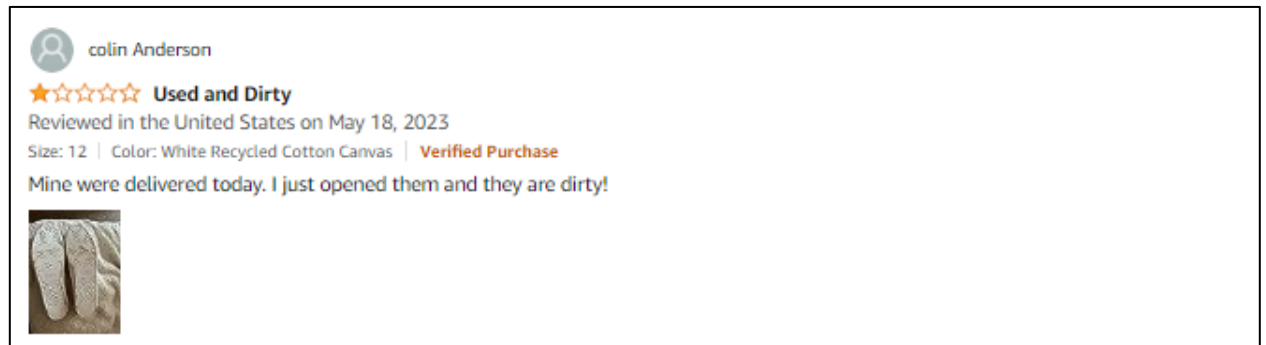


label attached” and “had obvious signs of wear and had been returned before shipping.”

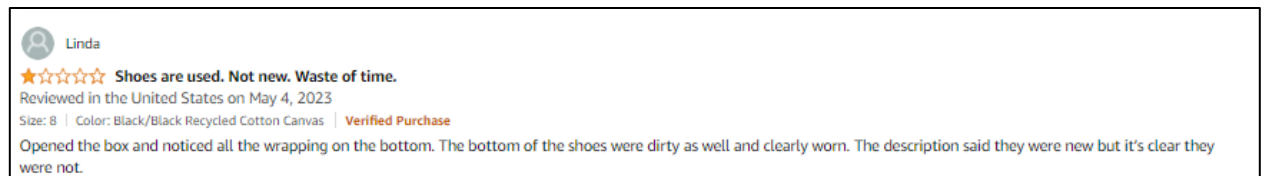
43. On May 29, 2023, Amazon user “ANOTHER CUSTOMER” posted that the product that arrived was “[f]ake,” which is evidenced by the fact that “[r]eal toms soles are non removeable [sic].”



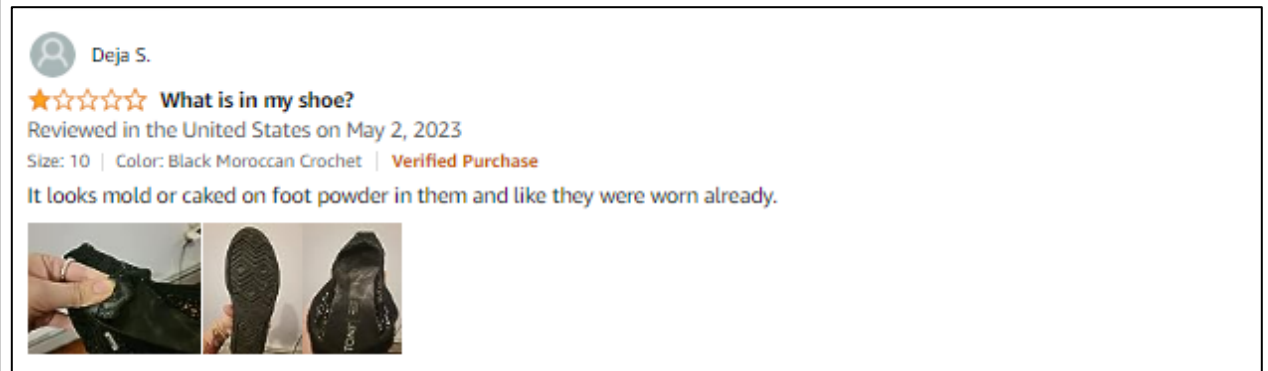
44. On May 18, 2023, Amazon user “colin Anderson” posted that the product arrived “[u]sed and [d]irty.”



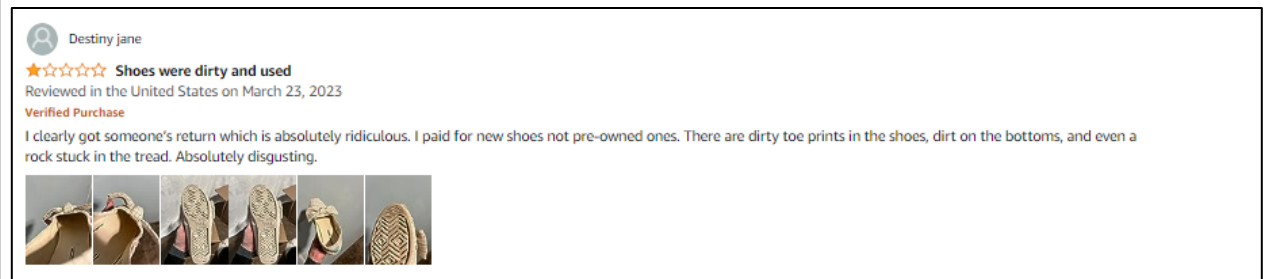
45. On May 4, 2023, Amazon user “Linda” complained that the “[s]hoes are used” as the “bottom of the shoes were dirty” and “clearly worn.”



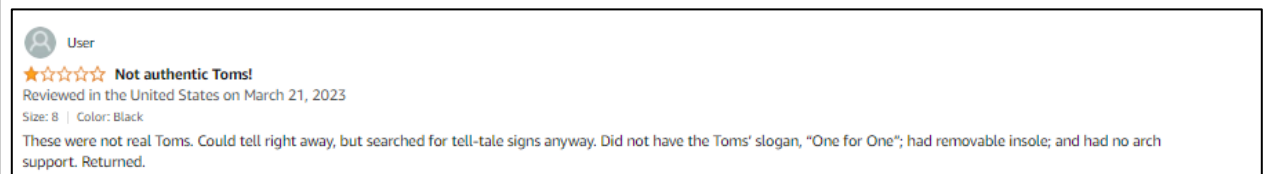
46. On May 2, 2023, Amazon user “Deja S.” complained that the product arrived with what looks like “mold or caked on foot powder” and “were worn already.”



47. On March 23, 2023, Amazon user “Destiny jane” complained that she received shoes that “were dirty and used” and had “dirty toe prints in the shoes, dirt on the bottoms, and even a rock stuck in the tread.”



48. On March 21, 2023, Amazon user “User” stated the product that arrived was “[n]ot authentic Toms” as indicated by the fact that the shoe did “not have the Toms’ slogan, ‘One for One’; had removable insole[s]; and had no arch support.”



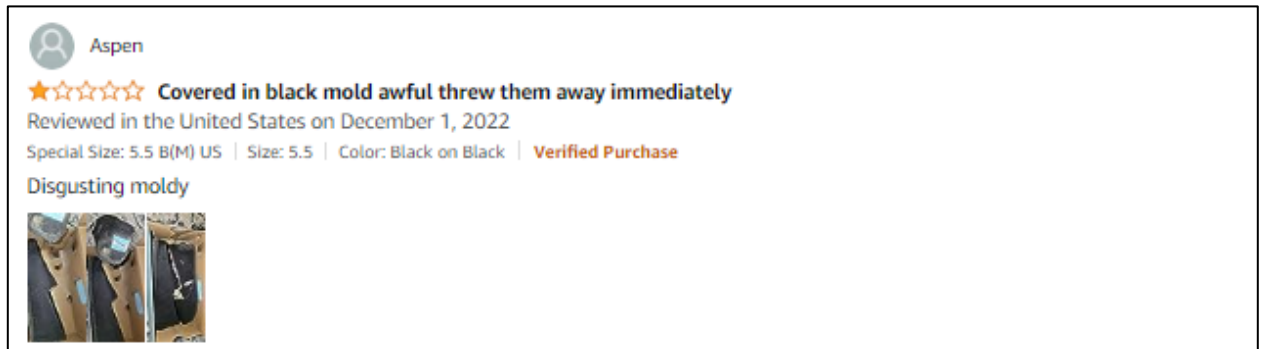
49. On November 16, 2022, Amazon user “Disappointed Buyer” posted that the product that arrived was fake.



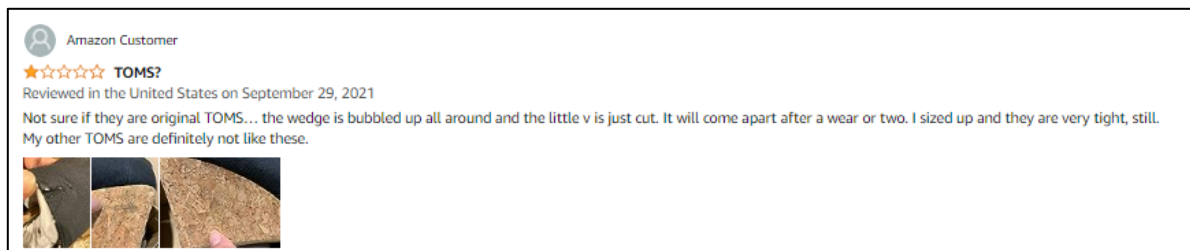
50. On September 5, 2022, Amazon user “Jody” stated the product she received was “[n]ot Toms!!!”



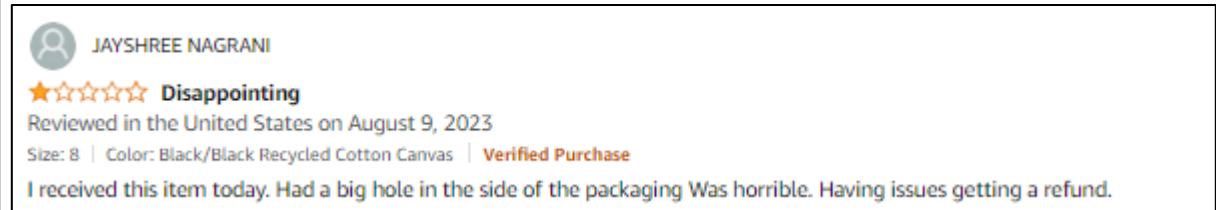
51. On December 1, 2022, Amazon user “Aspen” posted that the product arrived “[c]overed in black mold.”



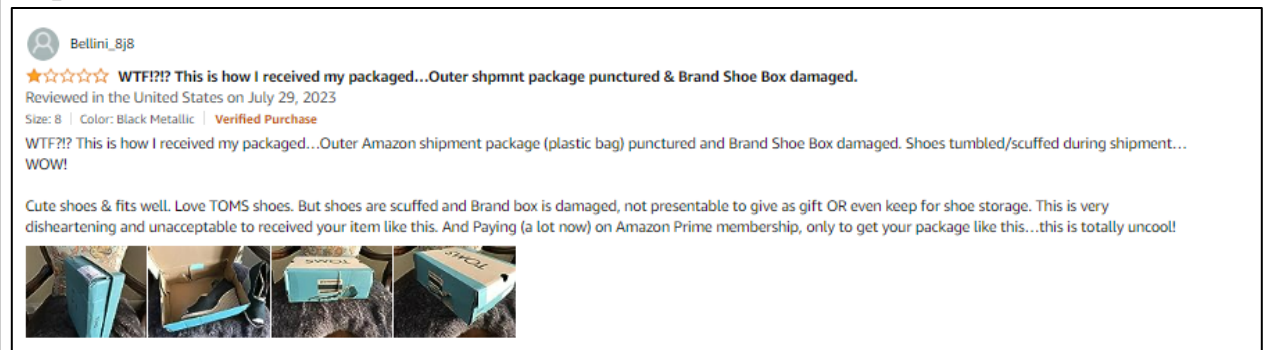
52. On September 29, 2021, an Amazon user complained that they are unsure if the product is “original TOMS” based on the condition.



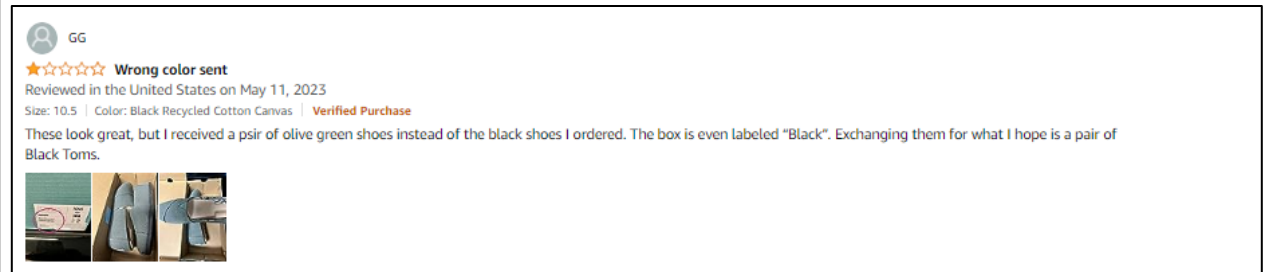
53. On August 9, 2023, Amazon user “JAYSHREE NAGRANI” posted that the product they received arrived with “a big hole in the side of the packaging.”



54. On July 29, 2023, Amazon user “Bellini\_8j8” posted that the package arrived “punctured” and “damaged” while the product was “tumbled/scuffed during shipment.”



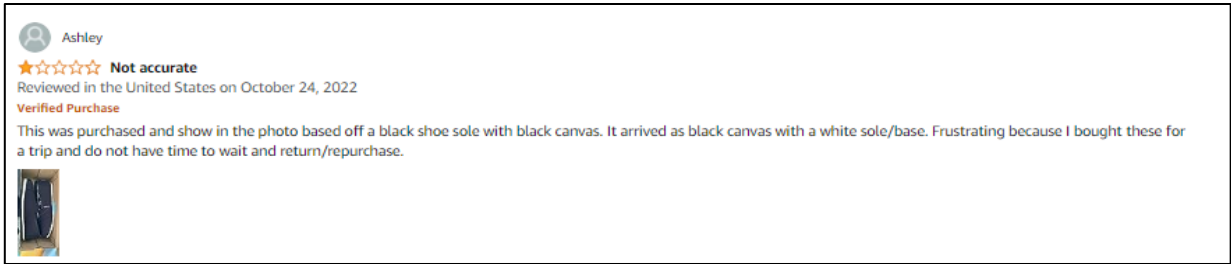
55. On May 11, 2023, Amazon user “GG” stated that the product that arrived was the wrong color.



56. On January 15, 2023, Amazon user “Akd” stated they “[o]nly got 1 shoe.”



57. On October 24, 2022, Amazon user “Ashley” posted that she received the wrong product.



58. The foregoing reviews are only a small sample of the negative reviews of TOMS products that have been posted on the Amazon platform.

59. Amazon does not allow product reviews to identify the seller that sold the product that is the subject of the product review. Given that Defendants are selling a high volume of products bearing the TOMS Trademarks on Amazon and are not subject to TOMS' quality controls, however, it is likely that some of the foregoing negative reviews—and the many similar reviews of TOMS products that appear on the Amazon website—were written by customers who purchased products bearing the TOMS Trademarks from Defendants.

**TOMS Has Implemented Quality Controls throughout Its  
Authorized Channels of Distribution to Combat the Problems  
Presented by Online Marketplaces, Protect the Value of the TOMS  
Trademarks, and Ensure Customers Receive the Genuine, High-  
Quality Products They Expect from TOMS**

60. The above reviews show how sales of poor-quality TOMS products disappoint TOMS' consumers and cause significant harm to the reputation and goodwill of TOMS and its brand. To protect itself and consumers from these harms, TOMS implemented a quality control program that applies to all of its Authorized Sellers, including sellers that sell in a brick-and-mortar retail setting and sellers that sell online.

61. TOMS' distribution controls are a quality control measure intended to minimize the risk and reputational damage caused by the illegal sale of poor-quality products bearing the TOMS Trademarks by unauthorized sellers like Defendants who



1 do not abide by TOMS' quality controls. The goal of TOMS' quality control program  
2 is to ensure that consumers who buy TOMS products, including ones buying online,  
3 receive the high-quality products and services that they expect with the TOMS name.  
4 By preventing consumers from receiving poor-quality products, the program both  
5 protects consumers from confusion and also protects the value and goodwill associated  
6 with the TOMS brand.

7 62. TOMS abides by its quality control requirements and requires its  
8 Authorized Sellers to abide by them as well.

9 63. TOMS' ability to exercise its quality controls is essential to the integrity  
10 and quality of TOMS products, as well as the value of the TOMS Trademarks and other  
11 intellectual property.

12 64. TOMS' quality controls begin with requiring that all outside sales of its  
13 products take place through TOMS' own website or through Authorized Sellers. This  
14 basic step ensures that everyone who is selling TOMS products is ultimately subject to  
15 TOMS' quality control requirements.

16 65. The TOMS Rules limit to whom and where Authorized Sellers may sell  
17 TOMS products. To prevent persons outside of TOMS' quality controls from acquiring  
18 and reselling TOMS products, the TOMS Rules prohibit Authorized Sellers from  
19 selling TOMS products to any third party who is not an Authorized Seller and who  
20 intends to resell the products. Authorized Sellers are permitted to sell TOMS products  
21 only to end-user consumers or, in certain circumstances, to other Authorized Sellers.

22 66. Authorized Sellers are also prohibited from selling TOMS products online  
23 unless they first obtain written consent from TOMS.

24 67. These restrictions are essential to TOMS' ability to exercise its quality  
25 controls over TOMS products because they prevent unauthorized sellers from obtaining  
26 and reselling TOMS Products and allow TOMS to know where all of its products are  
27 being sold online by Authorized Sellers. If a quality issue arises through an online sale,  
28 TOMS can identify the Authorized Seller that made the sale, contact the Authorized

1 Seller, and address the issue immediately. TOMS is unable to take such action against  
2 unauthorized sellers because it does not know who those sellers are and cannot obtain  
3 their cooperation in addressing any product quality issues that may arise.

4 68. In addition to restricting where and how Authorized Sellers can sell TOMS  
5 Products, the TOMS Rules also require Authorized Sellers to follow numerous quality  
6 control requirements related to the inspection, handling, and storage of TOMS  
7 products.

8 69. To ensure that customers receive the genuine and high-quality products  
9 they expect from TOMS, the TOMS Rules require Authorized Sellers to inspect all  
10 TOMS products for any damage, defects, evidence of tampering, and other non-  
11 conformance and remove all such products from inventory. Authorized Sellers are  
12 prohibited from selling damaged or defective products. Further, to assist TOMS in  
13 identifying any product quality issues, Authorized Sellers are required to report any  
14 defects to TOMS.

15 70. The TOMS Rules also require that Authorized Sellers store TOMS  
16 products in accordance with guidelines issued by TOMS. This requirement helps  
17 ensure that TOMS products are stored properly and are not damaged prior to being  
18 shipped to the consumer.

19 71. To avoid consumer confusion and ensure that customers receive genuine  
20 TOMS products, Authorized Sellers must sell TOMS products in their original  
21 packaging and are prohibited from relabeling, repackaging, or altering TOMS products  
22 or any accompanying label, literature, or safety-related information, unless instructed  
23 by TOMS.

24 72. Authorized Sellers are also prohibited from tampering with, defacing, or  
25 otherwise altering any identifying information on TOMS products, including any serial  
26 number, UPC code, or other identifying information.

27 73. The TOMS Rules give TOMS the right to monitor and audit Authorized  
28 Sellers by inspecting their facilities and records relating to TOMS Products, to ensure

1 their compliance with TOMS' quality control requirements. Authorized Sellers also  
2 must cooperate with TOMS with respect to any product recall or other consumer safety  
3 information dissemination effort conducted by TOMS regarding TOMS products.

4 74. The TOMS Rules also require Authorized Sellers to provide various  
5 customer services to their customers.

6 75. For example, Authorized Sellers must familiarize themselves with the  
7 features of all TOMS products kept in their inventory so that they can advise customers  
8 on the selection and safe use of TOMS products. Following the sale of genuine TOMS  
9 products, Authorized Sellers must provide ongoing support to consumers and prompt  
10 replies to their inquiries.

11 76. TOMS' quality control and customer service requirements are legitimate  
12 and substantial and have been implemented so that TOMS can control the quality of  
13 goods manufactured and sold under the TOMS Trademarks, to protect consumers as  
14 well as the value and goodwill associated with the TOMS Trademarks.

15 77. TOMS' quality control and customer service requirements are also  
16 material, as they are designed to protect consumers and prevent them from receiving  
17 poor-quality products. Consumers would find it material and relevant to their  
18 purchasing decision to know whether a TOMS product that they were considering  
19 buying was being sold by an Authorized Seller who is subject to TOMS' quality control  
20 and customer service requirements or whether the product is being sold by an  
21 unauthorized seller who is not subject to, and does not abide by, TOMS' quality  
22 controls and over whom TOMS is unable to exercise its quality controls.

23 **Given the Flood of Poor Quality Products Being Sold Online and**  
24 **Consumers' Inability to Inspect Such Products before Purchase, TOMS**  
25 **Imposes Additional Requirements on Its Authorized Sellers Who Sell Online**

26 78. As shown in consumer reviews cited above (¶¶42-57), TOMS products  
27 sold online are more susceptible to quality and authenticity problems as consumers  
28 cannot see the product before they buy it. These problems are especially severe on

1 online marketplaces such as Amazon, where sellers can conceal the fact that they are  
2 an unauthorized seller and many sellers may share a single product listing page.

3 79. Given these heightened risks to consumer satisfaction and the value of its  
4 trademarks that are posed by online sellers, TOMS imposes additional quality control  
5 requirements on all of its Authorized Sellers who sell TOMS products online.

6 80. If an Authorized Seller is approved to sell online (thus becoming an  
7 “Authorized Online Seller”), the Authorized Online Seller may sell TOMS products  
8 online only if it complies with additional quality control requirements.

9 81. The TOMS Rules allow Authorized Online Sellers to sell TOMS products  
10 only through “Permissible Websites” and “Authorized Websites.” These rules allow  
11 TOMS to oversee all Authorized Online Sellers who sell TOMS products online.

12 82. A “Permissible Website” is a website that: (1) is operated by an  
13 Authorized Online Seller in the Authorized Online Seller’s own legal name or  
14 registered fictitious name; and (2) lists the Authorized Online Seller’s mailing address,  
15 telephone number, and email address. Permissible Websites do not include storefronts  
16 on any online marketplaces.

17 83. Authorized Online Sellers must receive prior written approval from  
18 TOMS before they can sell TOMS products on any other website. To obtain this  
19 approval, Authorized Online Sellers must submit applications and undergo substantial  
20 vetting by TOMS that includes review of an applicant’s business operating record and  
21 online review history. A website that TOMS permits an Authorized Online Seller to  
22 use through this process is called an “Authorized Website.”

23 84. The TOMS Rules impose numerous additional requirements on  
24 Authorized Online Sellers who sell TOMS products on Permissible Websites or  
25 Authorized Websites.

26 85. For example, Authorized Online Sellers must use images of TOMS  
27 products provided or approved by TOMS and keep product descriptions up to date.  
28 Authorized Online Sellers are also prohibited from advertising any TOMS product they

1 do not carry in inventory.

2       86. The TOMS Rules prohibit Authorized Online Sellers from selling  
3 anonymously and instead require them to state their business name and current contact  
4 information on all websites where they sell, while not giving any appearance that the  
5 website is operated by TOMS or another third party. These requirements allow  
6 consumers of TOMS products to understand the nature of the seller from whom they  
7 are purchasing and contact the seller if any quality issues arise. These requirements  
8 also allow TOMS to protect the public from the sale of poor-quality TOMS products  
9 because it allows for easy detection of an Authorized Online Seller that sells poor-  
10 quality goods.

11       87. At TOMS' request, Authorized Online Sellers must provide access to and  
12 copies of all web pages that make up any Permissible Website or Authorized Website  
13 where Authorized Online Resellers are selling TOMS products.

14       88. Authorized Online Sellers are prohibited from representing or advertising  
15 any TOMS product as "new" that has been returned, repackaged, or otherwise been  
16 altered by a customer. When customers return products that were purchased online,  
17 many websites and online marketplaces will, by default, repackage the products and  
18 allow them to be relisted as "new." The TOMS Rules prohibit Authorized Online  
19 Sellers from allowing or carrying out this practice to ensure that customers receive the  
20 high-quality TOMS products they expect when they purchase "new" products.

21       89. If Authorized Online Sellers use any third-party fulfillment service to store  
22 inventory or fulfill orders for TOMS products, they must ensure that the fulfillment  
23 service provider is aware of and complies with all product quality controls and customer  
24 services standards required by the TOMS Rules. Authorized Online Sellers are also  
25 prohibited from using any fulfillment or storage service that could cause or allow  
26 customers to receive TOMS products from other sellers' product stock when they  
27 purchase from Authorized Online Sellers. These requirements ensure that the specific  
28 products that the Authorized Online Seller has that meet TOMS' quality standards will

1 be those that are shipped to the customer in fulfillment of an order, rather than other  
2 products that are outside of TOMS' quality controls.

3 90. All websites through which Authorized Online Sellers sell TOMS  
4 products must comply with all applicable data security, accessibility, and privacy  
5 requirements.

6 91. All websites where Authorized Online Sellers sell TOMS products must  
7 have a mechanism for receiving customer feedback, and Authorized Online Sellers  
8 must take appropriate steps to address any feedback received. Authorized Online  
9 Sellers must also: (i) keep copies of all information related to customer feedback  
10 regarding Authorized Online Sellers' products and their responses; (ii) provide this  
11 information to TOMS upon request; and (iii) cooperate with TOMS in investigating  
12 negative online reviews related to sales of TOMS products.

13 92. The additional quality control requirements that TOMS imposes on its  
14 Authorized Online Sellers are legitimate and substantial and have been implemented to  
15 allow TOMS to carefully control the quality of TOMS products that are sold online and  
16 quickly address any quality issues that arise.

17 93. TOMS' additional quality controls are also material, as they have been  
18 implemented to ensure that consumers purchasing TOMS products online receive  
19 genuine, high-quality TOMS products that abide by TOMS' quality controls.  
20 Consumers purchasing TOMS products online would find it relevant to their purchasing  
21 decision to know whether the product they are buying is vended by an Authorized  
22 Online Seller who is subject to, and abides by, TOMS' quality controls.

23 **TOMS Monitors and Audits Its Authorized Online Sellers to Ensure They**  
24 **Comply with Its Quality Control Requirements**

25 94. TOMS regularly audits its Authorized Online Sellers and monitors  
26 Permissible Websites and Authorized Websites to ensure that Authorized Online  
27 Sellers are adhering to TOMS' quality control requirements. TOMS carries out its  
28 auditing and monitoring actions pursuant to an internal program called the TOMS



1 Shoes, LLC Online Quality Control Program (“Auditing Program”).

2       95. As part of its Auditing Program, TOMS examines a rotating sample of  
3 Authorized Websites and Permissible Websites each month to ensure that the  
4 Authorized Online Sellers who sell through the websites are complying with the TOMS  
5 Rules. During these examinations, TOMS checks to make sure that, among other  
6 requirements, Permissible Websites and Authorized Websites: (i) clearly state an  
7 Authorized Online Seller’s legal name or registered fictitious business name and  
8 provide contact information for the Authorized Online Seller; (ii) do not give the  
9 appearance that they are operated by TOMS or a third party; (iii) do not display any  
10 content that could be detrimental to the TOMS brand; (iv) do not make any  
11 representations regarding TOMS products that are misleading; (v) exclusively contain  
12 images of TOMS products and product descriptions that are supplied or authorized by  
13 TOMS and up-to-date; and (vi) have a mechanism through which customers can  
14 provide feedback.

15       96. TOMS also periodically inspects online reviews of TOMS products and  
16 Authorized Online Sellers that appear on Permissible Websites and Authorized  
17 Websites. If TOMS discovers reviews asserting that Authorized Online Sellers  
18 provided poor customer service, sold poor-quality TOMS products, or otherwise did  
19 not adhere to the quality control and customer service requirements that all Authorized  
20 Sellers are required to follow, TOMS communicates with the responsible Authorized  
21 Online Sellers to determine the cause(s) of the negative reviews, take any necessary  
22 corrective action, and secure the removal of negative reviews if possible.

23       97. Each month, TOMS also conducts a test purchase of a TOMS product  
24 from a rotating sample of Permissible Websites and Authorized Websites. If TOMS  
25 discovers any quality problems in purchased products or discovers that an Authorized  
26 Online Seller is otherwise not following the quality control requirements that  
27 Authorized Online Sellers must follow when selling on Permissible Websites and  
28 Authorized Websites—for example, by altering product packaging or fulfilling product



1 orders in a way that allows customers to receive TOMS products from other sellers’  
2 product stock—TOMS communicates with the responsible Authorized Online Seller  
3 and takes any necessary corrective action.

4 98. Through its Auditing Program, TOMS may visit the facilities of its  
5 Authorized Online Sellers to confirm that all of its quality control requirements are  
6 being followed and that Authorized Online Sellers are not selling any counterfeit, used,  
7 or otherwise poor quality TOMS products.

8 99. If TOMS discovers that an Authorized Online Seller is selling TOMS  
9 products of poor-quality or otherwise not adhering to TOMS’ quality control or  
10 customer service requirements, TOMS conducts an investigation to determine the  
11 source of the problem. The TOMS Rules require that Authorized Online Sellers  
12 cooperate with TOMS’ investigation, permit TOMS to inspect their facilities and  
13 records relating to TOMS products, and disclose all information about where they  
14 obtained TOMS products. Based on what its investigation reveals, TOMS has the right  
15 to cease selling its products to an Authorized Online Seller and to suspend or terminate  
16 its status as an Authorized Seller of TOMS products.

17 **Genuine TOMS Products Come with TOMS’ Satisfaction Guarantee;**  
18 **Defendants’ Products Do Not**

19 100. TOMS products purchased from TOMS or TOMS’ Authorized Sellers  
20 come with the TOMS Satisfaction Guarantee (the “TOMS Guarantee”).

21 101. The TOMS Guarantee provides that customers who are dissatisfied with a  
22 TOMS product may request a refund or credit within 45 days of the date of purchase if  
23 the customer provides proof of purchase from a TOMS Authorized Seller. The  
24 complete TOMS Guarantee statement can be viewed on the TOMS website—see  
25 <https://www.toms.com/us/faq.html>—and is incorporated herein.

26 102. As discussed above, TOMS cannot ensure the quality of the products sold  
27 by unauthorized sellers, like Defendants, who are not subject to TOMS’ quality  
28 controls. For this reason, the TOMS Guarantee does not cover TOMS products sold by

1 unauthorized sellers, like Defendants, who do not comply with TOMS' quality controls  
2 and standards. Indeed, the TOMS Guarantee specifically states: "Please note that we  
3 are unable to control the quality of TOMS products sold by unauthorized sellers  
4 Therefore unless otherwise prohibited by law, the Guarantee is not available for  
5 products purchased from unauthorized sellers, including unauthorized internet sites."

6 103. The TOMS Guarantee is a material component of genuine TOMS  
7 products. Consumers who purchase TOMS products with the TOMS Guarantee receive  
8 the peace of mind that they are receiving a good quality product, that TOMS stands  
9 behind the product, and that if for any reason they are not satisfied with a TOMS  
10 product, they will have the ability to request a refund or credit.

11 104. Consumers would find it material and relevant to their purchasing decision  
12 to know whether a TOMS product they were considering buying was covered by the  
13 TOMS Guarantee. If a consumer knew a product did not come with the TOMS  
14 Guarantee, the consumer would be less likely to purchase the product.

15 **Defendants Are Not Authorized Sellers and Are Illegally Selling Non-**  
16 **Genuine Products Bearing the TOMS Trademarks**

17 105. Due to the risks to consumers and the reputational concerns associated  
18 with the illegal sale of products bearing the TOMS Trademarks by unauthorized  
19 Internet sellers, TOMS actively monitors the sale of its products online.

20 106. In the course of this monitoring, TOMS discovered products bearing the  
21 TOMS Trademarks being illegally sold by Defendants through the Unauthorized  
22 Storefront.

23 107. After TOMS discovered products bearing the TOMS Trademarks being  
24 illegally sold on the Unauthorized Storefront, TOMS investigated the storefront to  
25 determine who was operating the storefront.

26 108. In July of 2023, counsel for TOMS sent a cease-and-desist letter to G.B.  
27 Beach Concepts, Inc., demanding that they immediately cease selling products bearing  
28 the TOMS Trademarks.

1        109. This letter further notified Defendants that they were injuring TOMS in  
2 California through their illegal actions and that they would be subject to personal  
3 jurisdiction in California if they continued to engage in their conduct.

4        110. This letter also notified Defendants that TOMS has contracts with its  
5 Authorized Sellers that prohibit Authorized Sellers from selling TOMS products to  
6 unauthorized resellers, and that Defendants will be liable for tortiously interfering with  
7 those contracts if they continue to purchase products bearing TOMS' Trademarks from  
8 Authorized Sellers for the purpose of reselling them.

9        111. Defendants did not respond to this letter and continued to sell products  
10 bearing the TOMS Trademarks on the Amazon storefront.

11        112. Counsel for TOMS sent a second round of cease-and-desist letters to  
12 Defendants in August, 2023. Defendants did not respond to those letters either.

13        113. As of the time of filing, Defendants have not responded to any of TOMS'  
14 letters and continue to advertise and sell products bearing the TOMS Trademarks  
15 through the Amazon storefront.

16        114. Through their highly interactive Amazon storefront, Defendants have sold  
17 products bearing the TOMS Trademarks to residents of California through the regular  
18 course of business.

19        115. Defendants' disregard of TOMS' cease-and-desist letters and continued  
20 sale of non-genuine products despite being informed of their unlawful conduct  
21 demonstrates that they are acting intentionally, willfully, and maliciously.

22        **Defendants Are Not Subject to, Do Not Abide by, and Interfere with**  
23        **TOMS' Quality Control Requirements**

24        116. Defendants are not Authorized Sellers of TOMS products, and do not  
25 abide by TOMS' quality control and customer service requirements that TOMS  
26 requires Authorized Sellers to follow.

27        117. Defendants directly violate TOMS' quality controls, among many other  
28 ways, by failing to completely and accurately identify themselves on their online

1 storefront. Defendants do not publicly display their real business address or email  
2 address on their Amazon storefront.

3 118. Defendants also do not comply with TOMS' quality controls—and  
4 interfere with TOMS' quality controls—because they have not given TOMS the right  
5 to audit and inspect Defendants' facilities and practices. Therefore, among other things,  
6 TOMS cannot know if Defendants are: (i) sourcing products only from authorized  
7 sources; (ii) properly inspecting and storing products, and not selling poor-quality  
8 products; (iii) selling products only in official and unaltered TOMS packaging;  
9 (iv) refusing to allow products that have been returned or repackaged to be listed for  
10 sale as “new” products; (v) not permitting their products to be commingled with  
11 products owned by other sellers, such that a customer could receive a product owned  
12 by another seller when purchasing from Defendants; and (vi) providing exceptional  
13 customer service and responding appropriately to feedback received from customers.

14 119. Defendants' failure to abide by the TOMS Rules prevents TOMS from  
15 exercising control over the quality of products Defendants sell bearing the TOMS  
16 Trademarks. Unlike with its Authorized Online Sellers, TOMS cannot monitor or audit  
17 Defendants to ensure they are complying with its quality controls or take any action to  
18 correct quality problems it discovers or is alerted to in products sold by Defendants.

19 120. Because the products Defendants sell bearing the TOMS Trademarks are  
20 not subject to, do not abide by, and interfere with TOMS' quality control and customer  
21 service requirements, they are not genuine TOMS products.

22 **Defendants Are Infringing the TOMS Trademarks by Selling**  
23 **Products Bearing the TOMS Trademarks that Do Not Come**  
24 **with the TOMS Guarantee**

25 121. As set forth above, genuine TOMS products purchased from TOMS or  
26 Authorized Sellers who comply with TOMS' quality controls come with the TOMS  
27 Guarantee.

28 122. Because Defendants are not Authorized Sellers of TOMS products and do

1 not comply with TOMS' quality controls, the products they sell bearing the TOMS  
2 Trademarks do not come with the TOMS Guarantee.

3 123. Because the products Defendants sell do not come with the TOMS  
4 Guarantee, they are materially different from genuine TOMS products. The TOMS  
5 Guarantee is a material part of what consumers expect when they purchase TOMS  
6 products.

7 124. Defendants' unauthorized sale of non-genuine products bearing the  
8 TOMS Trademarks is likely to, and does, create customer confusion because customers  
9 who purchase products from Defendants believe they are purchasing genuine TOMS  
10 products that come with the TOMS Guarantee when, in fact, they are not.

11 **Defendants Are Tortiously Interfering with**  
12 **TOMS' Agreements with Its Authorized Sellers**

13 125. Upon information and belief, Defendants have purchased TOMS products  
14 from TOMS Authorized Sellers for purposes of unlawfully infringing upon and  
15 materially damaging the value of the TOMS Trademarks by reselling the products on  
16 the Internet outside of TOMS' quality controls.

17 126. TOMS' agreements with its Authorized Sellers prohibit Authorized  
18 Sellers from selling TOMS products to third parties, like Defendants, who are not  
19 Authorized Sellers and who intend to resell the products.

20 127. Defendants have known of this prohibition since, at the latest,  
21 approximately July, 2023. In that month, TOMS mailed cease-and-desist letters to all  
22 Defendants explaining that TOMS has agreements with all of its Authorized Sellers  
23 that prohibit them from selling TOMS products to any person or entity that is not an  
24 Authorized Seller and intends to resell the products.

25 128. TOMS' letters also informed Defendants that, by purchasing TOMS  
26 products from an Authorized Seller for the purpose of reselling them, they were causing  
27 a breach of the agreement between TOMS and its Authorized Seller and were  
28 interfering with TOMS' agreements and business relationships.

1           129. TOMS' July and August, 2023 letters also advised Defendants that if they  
2 continued to acquire products from TOMS' Authorized Sellers and then resold the  
3 products, they would be liable for tortiously interfering with TOMS' contracts and  
4 business relationships with its Authorized Sellers.

5           130. Despite being provided this information, upon information and belief,  
6 Defendants have continued to acquire TOMS products from TOMS' Authorized Sellers  
7 and resell the products.

8           131. Upon information and belief, Defendants do not disclose to Authorized  
9 Sellers that they intend to resell the products they purchase from Authorized Sellers.

10           132. Upon information and belief, Defendants willfully and knowingly  
11 induced, and are continuing to induce, unknown Authorized Sellers to breach their  
12 agreements with TOMS so that they can acquire TOMS products and unlawfully  
13 infringe upon the TOMS Trademarks by reselling the products.

14                           **The Individual Defendant Is Liable**

15           133. TOMS asserts claims against Defendant Jerry Foerch in his individual  
16 capacity as well as his capacity as a corporate officer of G.B. Beach Concepts, Inc.

17           134. Upon information and belief, Foerch authorizes, directs, or otherwise  
18 personally participates in the sale of infringing products bearing the TOMS Trademarks  
19 by Beach Concepts. These are affirmative actions beyond merely holding an ownership  
20 interest in Beach Concepts. Accordingly, Foerch is personally liable for the infringing  
21 activities of Beach Concepts without regard to piercing the corporate veil.

22           135. Alternatively, there is such unity of interest and ownership that the  
23 separate personalities of Beach Concepts and Foerch no longer exist. This is supported  
24 by the fact that Beach Concept's principal, mailing, and street address, per filings with  
25 the Florida Secretary of State, is a residential address that investigation identified as  
26 Foerch's residence. Furthermore, Foerch is listed as Beach Concept's President and  
27 agent. Beach Concepts appears to have no officers other than Foerch. If the infringing  
28 acts in this case were treated as Beach Concept's alone, an inequitable result would



1 follow. Accordingly, TOMS is entitled to pierce the corporate veil and hold Foerch  
2 personally liable for the infringing activities of G.B. Beach Concepts, Inc.

3 **TOMS Has Suffered Substantial Harm as a**  
4 **Result of Defendants' Conduct**

5 136. As set forth above, the unauthorized sale of products bearing the TOMS  
6 Trademarks through unauthorized sellers such as Defendants has caused significant  
7 harm to the TOMS brand.

8 137. When a consumer receives a non-genuine, damaged, or poor-quality  
9 product from an unauthorized seller, such as Defendants, the consumer associates that  
10 negative experience with TOMS. As such, Defendants' ongoing sale of non-genuine  
11 products bearing the TOMS Trademarks harms the TOMS brand.

12 138. TOMS has suffered, and will continue to suffer, significant monetary harm  
13 as a result of Defendants' actions including, but not limited to, loss of sales, damage to  
14 its intellectual property, and damage to its existing and potential business relations.

15 139. TOMS has suffered, and will continue to suffer, irreparable harm as a  
16 result of Defendants' actions, including, but not limited to, irreparable harm to its  
17 reputation, goodwill, business and customer relationships, intellectual property rights,  
18 and brand integrity.

19 140. TOMS is entitled to injunctive relief because, unless enjoined by this  
20 Court, Defendants will continue to unlawfully sell non-genuine products bearing the  
21 TOMS Trademarks, causing continued irreparable harm to TOMS' reputation,  
22 goodwill, relationships, intellectual property, and brand integrity.

23 141. Furthermore, Defendants' conduct was and is knowing, reckless,  
24 intentional, willful, malicious, wanton, and contrary to law.

25 142. Defendants' disregard of communications from TOMS and continuation  
26 of selling of non-genuine products despite being informed of their unlawful conduct  
27 demonstrates that they are acting intentionally, willfully, and maliciously.

28 143. Defendants' willful violations of the TOMS Trademarks and continued



1 pattern of misconduct demonstrate intent to harm TOMS.

2 **FIRST CAUSE OF ACTION**

3 **Trademark Infringement**

4 **15 U.S.C. §§1114 and 1125(a)(1)(A)**

5 **(Against All Defendants)**

6 144. TOMS hereby incorporates the allegations contained in the foregoing  
7 paragraphs as if fully set forth herein.

8 145. TOMS is the owner of the TOMS Trademarks.

9 146. TOMS has registered the TOMS Trademarks with the United States Patent  
10 and Trademark Office.

11 147. The TOMS Trademarks are valid and subsisting trademarks in full force  
12 and effect.

13 148. Defendants willfully and knowingly used, and continue to use, the TOMS  
14 Trademarks in interstate commerce for purposes of selling non-genuine products  
15 bearing the TOMS Trademarks on the Internet without TOMS' consent.

16 149. The products Defendants sell bearing the TOMS Trademarks are not  
17 authorized for sale by TOMS.

18 150. The products Defendants sell bearing the TOMS Trademarks are  
19 materially different from genuine TOMS products because they are not subject to, do  
20 not abide by, and interfere with the legitimate and substantial quality controls that  
21 TOMS has established.

22 151. The products Defendants sell bearing the TOMS Trademarks are also  
23 materially different from genuine TOMS products because they do not come with the  
24 TOMS Guarantee, which accompanies genuine TOMS products.

25 152. Defendants' unauthorized sale of materially different products bearing the  
26 TOMS Trademarks is likely to cause confusion, cause mistake, or deceive consumers  
27 because it suggests that the products Defendants offer for sale are genuine TOMS  
28 products when they are not.

153. Defendants' unauthorized sale of materially different products bearing the TOMS Trademarks is likely to cause confusion, cause mistake, or deceive consumers because it suggests that the products Defendants offer for sale are sponsored by, authorized by, or otherwise connected with TOMS when, in fact, they are not.

154. Defendants' unauthorized use of the TOMS Trademarks has infringed upon and materially damaged the value of the TOMS Trademarks and caused significant damage to TOMS' business relationships.

155. As a proximate result of Defendants' actions, TOMS has suffered, and will continue to suffer, immediate and irreparable harm. TOMS has also suffered, and continues to suffer, damage to its business, goodwill, reputation, and profits in an amount to be proven at trial.

156. TOMS is entitled to recover its damages caused by Defendants' infringement of the TOMS Trademarks and disgorge Defendants' profits from their willfully infringing sales and unjust enrichment.

157. TOMS is entitled to injunctive relief under 15 U.S.C. §1116 because it has no adequate remedy at law for Defendants' infringement and unless Defendants are permanently enjoined, TOMS will suffer irreparable harm.

158. TOMS is entitled to enhanced damages and attorneys' fees under 15 U.S.C. §1117(a) because Defendants willfully, intentionally, maliciously, and in bad faith infringed on the TOMS Trademarks.

## **SECOND CAUSE OF ACTION**

### **Unfair Competition - 15 U.S.C. § 1125(a)**

#### **(Against All Defendants)**

159. TOMS hereby incorporates the allegations contained in the foregoing paragraphs as if fully set forth herein.

160. As set forth above, Defendants are selling non-genuine products bearing the TOMS Trademarks that are materially different from genuine TOMS products.

161. Defendants' sale of non-genuine products bearing the TOMS Trademarks

1 is likely to cause consumer confusion and lead consumers to believe that those products  
2 are affiliated with, connected with, associated with, sponsored by, or approved by  
3 TOMS when they are not.

4 162. Defendants' conduct constitutes unfair competition under the Lanham  
5 Act, 15 U.S.C. §1125(a).

6 163. TOMS is entitled to injunctive relief under 15 U.S.C. §1116 because it has  
7 no adequate remedy at law for Defendants' infringement and unless Defendants are  
8 permanently enjoined, TOMS will suffer irreparable harm.

9 164. TOMS is entitled to enhanced damages and attorneys' fees under 15  
10 U.S.C. §1117(a) because Defendants willfully, intentionally, maliciously, and in bad  
11 faith infringed on the TOMS Trademarks.

### 12 **THIRD CAUSE OF ACTION**

#### 13 **Unfair and Deceptive Business Practices**

#### 14 **Cal. Bus. & Prof. Code §§ 17200, et seq.**

#### 15 **(Against All Defendants)**

16 165. TOMS hereby incorporates the allegations contained in the foregoing  
17 paragraphs as if fully set forth herein.

18 166. Defendants willfully and knowingly used, and continue to use, the TOMS  
19 Trademarks in interstate commerce for the purpose of advertising, marketing, and  
20 selling products bearing the TOMS Trademarks without the consent of TOMS.

21 167. The products Defendants sell are not genuine TOMS products because the  
22 products are not authorized for sale by TOMS, are not subject to TOMS' quality  
23 controls, and are materially different from genuine TOMS products.

24 168. Defendants' unauthorized sale of products bearing the TOMS Trademarks  
25 interferes with TOMS' ability to exercise quality control over products bearing the  
26 TOMS Trademarks because TOMS is unable to audit Defendants to confirm it is  
27 complying with TOMS' quality control requirements and/or close Defendants' account  
28 if they fail to comply with TOMS' quality control requirements.

1           169. The products Defendants sell are materially different from genuine TOMS  
2 products because they are not subject to, and interfere with, TOMS' quality controls.

3           170. The products Defendants sell are materially different from genuine TOMS  
4 products because they do not come with the TOMS Guarantee or customer service  
5 benefits that accompany genuine TOMS products.

6           171. Defendants' use of the TOMS Trademarks in connection with the  
7 unauthorized advertising, promotion, and sale of products bearing the TOMS  
8 Trademarks misrepresents the nature, characteristics, qualities, and origin of  
9 Defendants' products because it suggests that the products are subject to TOMS quality  
10 control requirements when they are not.

11           172. Defendants' use of the TOMS Trademarks in connection with the  
12 unauthorized advertising, promotion, and sale of products bearing the TOMS  
13 Trademarks misrepresents the nature, characteristics, qualities, and origin of  
14 Defendants' products because it suggests that the products come with the TOMS  
15 Guarantee and customer service benefits that accompany genuine TOMS products  
16 when they do not.

17           173. Defendants' use of the TOMS Trademarks in connection with the  
18 unauthorized advertising, promotion, and sale of products bearing the TOMS  
19 Trademarks is likely to cause confusion, cause mistake, or deceive because it suggests  
20 that the products Defendants offer for sale are genuine and authentic TOMS products  
21 when they are not.

22           174. Defendants' use of the TOMS Trademarks in connection with the  
23 unauthorized advertising, promotion, and sale of products bearing the TOMS  
24 Trademarks is likely to cause confusion, cause mistake, or deceive because it suggests  
25 that the products Defendants offer for sale are sponsored by, authorized by, or otherwise  
26 connected with TOMS when they are not.

27           175. Defendants' unauthorized and deceptive use of the TOMS Trademarks is  
28 material and likely to influence customers to purchase the products it sells, as customers

1 are likely to believe that the products Defendants advertise using the TOMS  
2 Trademarks are genuine TOMS products that are subject to TOMS' quality controls  
3 and come with the TOMS Guarantee when they do not.

4 176. Defendants' actions constitute unfair, deceptive, untrue, and/or misleading  
5 advertising in violation of Cal. Bus. & Prof. Code §§17200 *et seq.*

6 177. Defendants have also knowingly and willfully obtained TOMS products  
7 through unlawful means and in violation of TOMS' agreements with its Authorized  
8 Retailers. Specifically, Defendants have continued to acquire TOMS products through  
9 TOMS' Authorized Sellers for purposes of reselling those products on the Internet  
10 despite knowing that TOMS' agreements with its Authorized Sellers prohibit them  
11 from selling products to third parties for purposes of resale.

12 178. Defendants' actions constitute unlawful, unfair, and/or fraudulent business  
13 acts or practices in violation of violate Cal. Bus. & Prof. Code §§17200 *et seq.*

14 179. As a result of Defendants' unlawful actions, TOMS has suffered, and  
15 continues to suffer, irreparable harm. TOMS has also suffered, and continues to suffer,  
16 damages, including, but not limited to, loss of business, goodwill, reputation, and  
17 profits in an amount to be proven at trial.

18 180. TOMS is entitled to injunctive relief under Cal. Bus. & Prof. Code §17203  
19 because it has no adequate remedy at law for Defendants' infringement and, unless  
20 Defendants are permanently enjoined, TOMS will suffer irreparable harm.

#### 21 **FOURTH CAUSE OF ACTION**

#### 22 **Common Law Unfair Competition**

#### 23 **(Against All Defendants)**

24 181. TOMS hereby incorporates the allegations contained in the foregoing  
25 paragraphs as if fully set forth herein.

26 182. Defendants' unauthorized advertisement and sale of non-genuine products  
27 bearing the TOMS Trademarks interferes with TOMS' quality controls and its ability  
28 to exercise quality control over products bearing the TOMS Trademarks.

1 183. Defendants' unauthorized advertisement and sale of non-genuine products  
2 bearing the TOMS Trademarks is likely to cause confusion, cause mistake, or deceive  
3 consumers because Defendants' use of the TOMS Trademarks suggests that the  
4 products Defendants offer for sale are covered by the TOMS Guarantee and are subject  
5 to, and abide by, TOMS' quality controls when, in fact, they are not.

6 184. Defendants' unauthorized advertisement and sale of non-genuine products  
7 bearing the TOMS Trademarks is likely to cause confusion, cause mistake, or deceive  
8 consumers because Defendants' use of the TOMS Trademarks suggests that the  
9 products Defendants offer for sale are genuine TOMS products when, in fact, they are  
10 not.

11 185. Defendants' unauthorized advertisement and sale of non-genuine products  
12 bearing the TOMS Trademarks is likely to cause confusion, cause mistake, or deceive  
13 consumers because Defendants' use of the TOMS Trademarks suggests that the  
14 products Defendants offer for sale are sponsored by, authorized by, or otherwise  
15 connected with TOMS when, in fact, they are not.

16 186. Defendants' unlawful actions constitute active misrepresentation as to the  
17 source of the products they sell. These false representations tend to confuse customers  
18 and induce them to believe that Defendants' products are genuine TOMS products  
19 when, in fact, they are not.

20 187. Defendants' unauthorized sale of products bearing the TOMS Trademarks  
21 and unauthorized use of the TOMS Trademarks in advertising infringes the TOMS  
22 Trademarks and constitutes unfair competition at common law.

23 188. Defendants' unauthorized use of the TOMS Trademarks has materially  
24 damaged the value of the TOMS Trademarks, caused significant damage to TOMS'  
25 business relations, and infringed the TOMS Trademarks.

26 189. As a result, TOMS has suffered, and continues to suffer, immediate and  
27 irreparable harm. TOMS has also suffered, and continues to suffer, damages, including,  
28 but not limited to, loss of business, goodwill, reputation, and profits in an amount to be

1 proven at trial.

2 190. TOMS is also entitled to punitive damages because Defendants acted with  
3 actual malice accompanied by a wanton and willful disregard of persons who  
4 foreseeably might be harmed by their acts and omissions.

## 5 **FIFTH CAUSE OF ACTION**

### 6 **Intentional Interference with Contractual Relations**

#### 7 **(Against All Defendants)**

8 191. TOMS hereby incorporates the allegations contained in the foregoing  
9 paragraphs as if fully set forth herein.

10 192. TOMS has contracts with its Authorized Sellers who sell TOMS products  
11 (the “Contracts”). The Contracts prohibit Authorized Sellers from selling TOMS  
12 products to third parties, such as Defendants, who are not Authorized Sellers and who  
13 intend to resell the products.

14 193. Defendants know and, at all relevant times described herein, know of  
15 TOMS Contracts with its Authorized Sellers who sell TOMS products.

16 194. Defendants are not Authorized Sellers of TOMS products.

17 195. Defendants have sold—and continue to sell—a high volume of products  
18 bearing the TOMS Trademarks through their Amazon storefront.

19 196. Based on these facts, it is plausible and a reasonable inference that  
20 Defendants acquired the products they are reselling from one or more of TOMS’  
21 Authorized Sellers.

22 197. Defendants purchased products from Authorized Sellers for the purpose  
23 of reselling them on the Internet, which prevented performance of at least one or more  
24 of the Contracts and/or made performance of the Contracts for TOMS more expensive  
25 or difficult.

26 198. Defendants have known since (at the latest) receiving TOMS’ July 11,  
27 2023 cease-and-desist letter that TOMS has agreements with all of its Authorized  
28 Sellers that prohibit them from selling to non-Authorized Sellers who intend to resell



1 products, and that Defendants would tortiously interfere with those agreements if they  
2 continued to acquire products from Authorized Sellers for resale.

3 199. Defendants, without legal right, privilege, or justification, intended to  
4 disrupt the performance of one or more of the Contracts, or knew that disruption of one  
5 or more of the Contracts was certain or substantially certain to occur as a result of their  
6 conduct.

7 200. Defendants' actions have caused or were a substantial factor in causing  
8 TOMS to suffer, and continue to suffer, substantial harm, including loss of sales and  
9 damage to TOMS' existing and potential business relations with one or more of TOMS'  
10 authorized Sellers, in an amount to be proven at trial.

### 11 **PRAYER FOR RELIEF**

12 WHEREFORE, TOMS prays for relief and judgment as follows:

13 A. Judgment in favor of TOMS and against Defendants in an amount to be  
14 determined at trial including, but not limited to, compensatory damages, statutory  
15 damages, treble damages, liquidated damages, restitution, including disgorgement of  
16 profits, and pre-judgment and post-judgment interest, as permitted by law;

17 B. Preliminary and permanent injunctions enjoining Defendants and any  
18 employees, agents, servants, officers, representatives, directors, attorneys, successors,  
19 affiliates, assigns, any and all other entities owned or controlled by Defendants, and all  
20 of those in active concert and participation with Defendants (the "Enjoined Parties") as  
21 follows:

- 22 i) Prohibiting the Enjoined Parties from advertising or selling, via the
- 23 Internet or otherwise, all products bearing the TOMS Trademarks;
- 24 ii) Prohibiting the Enjoined Parties from using any of the TOMS
- 25 Trademarks in any manner, including advertising on the Internet;
- 26 iii) Prohibiting the Enjoined Parties from importing, exporting,
- 27 manufacturing, producing, distributing, circulating, selling,
- 28 offering to sell, advertising, promoting, or displaying any and all

- 1 products bearing any of the TOMS Trademarks;
- 2 iv) Prohibiting the Enjoined Parties from disposing of, destroying,
- 3 altering, moving, removing, concealing, or tampering with any
- 4 records related to any products sold by them which contain the
- 5 TOMS Trademarks including invoices, correspondence with
- 6 vendors and distributors, bank records, account books, financial
- 7 statements, purchase contracts, sales receipts, and any other records
- 8 that would reflect the source of the products that Defendants have
- 9 sold bearing these trademarks;
- 10 v) Requiring the Enjoined Parties to take all action to remove from the
- 11 Enjoined Parties' websites any reference to any of TOMS' products,
- 12 or any of the TOMS Trademarks;
- 13 vi) Requiring the Enjoined Parties to take all action, including but not
- 14 limited to, requesting removal from the Internet search engines
- 15 (such as Google, Yahoo, and Bing), to remove from the Internet any
- 16 of the TOMS Trademarks which associate TOMS' products or the
- 17 TOMS Trademarks with the Enjoined Parties or the Enjoined
- 18 Parties' websites;
- 19 vii) Requiring the Enjoined Parties to take all action to remove the
- 20 TOMS Trademarks from the Internet, including, but not limited to,
- 21 third-party marketplace websites such as [www.amazon.com](http://www.amazon.com),
- 22 [www.walmart.com](http://www.walmart.com), [www.ebay.com](http://www.ebay.com), and [www.target.com](http://www.target.com); and
- 23 viii) Requiring the Enjoined Parties to take all action to remove, or cause
- 24 to be removed, any customer reviews of products bearing TOMS'
- 25 trademarks that were sold by Defendants on third-party marketplace
- 26 websites including, but not limited to, [www.amazon.com](http://www.amazon.com) and
- 27 [www.ebay.com](http://www.ebay.com).

28 C. An award of attorneys' fees, costs, and expenses;

1 D. Such other and further relief as the Court deems just, equitable, and proper.

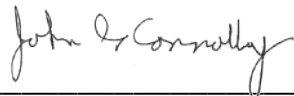
2  
3  
4 **JURY DEMAND**

5 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, TOMS demands a  
6 trial by jury on all issues so triable.

7  
8 Dated: September 24, 2024

Respectfully submitted,

9  
10 CONNOLLY FINKEL & GOSSELIN LLP

11  
12 By:   
13 John G. Connolly  
14 *Attorneys for Plaintiff*  
15 **TOMS SHOES, LLC**